

IN THE HIGH COURT OF BOMBAY AT GOA.

WRIT PETITION NO. 242 OF 2001.

1. Shri Nilu Raya Mato,
Khalashi, Opa Water Works,
r/o Ameghal Ponda, Goa.
2. Shri Ramdas K. Gaude,
Labourer, Opa Water Works,
r/o Opawada, Khandepar, Goa.
3. Shri Rauji K. Gaude,
Labourer, Opa Water Works,
r/o Opawada, Khandepar,
Ponda-Goa.
4. Shri Shankar Jhalmi,
Labourer, Opa Water Works,
r/o Gauthan, Khandepar,
Ponda-Goa.
5. Prabhakar J. Naik, Labourer,
Opa Water Works, r/o Gauthan,
Khandepar, Ponda-Goa.

... Petitioners.

Versus

1. State of Goa through Chief
Secretray, Secretariat, Panaji.
2. Chief Engineer, Altinho,
Panaji.
3. Assistant Engineer, Opa Water
Works, Khandepar, Ponda-Goa.
4. Shri Kanta Gaude, Coolie/Mazdoor,
Opa Water Works, r/o Opawado,
Khandepar, Ponda-Goa.
5. Shri Ashok D. Gaude, Coolie,
Opa Water Works, r/o Keriem,
Khandepar, Goa.
6. Shri Prakash Gaude, Coolie/
Mazdoor, Opa Water Works,
r/o Keriem, Khandepar,
Ponda-Goa.
7. Shri Antonio Rosario, Coolie/
Mazdoor, Opa Water Works,
r/o Kaziwada, Ponda, Goa.
8. Shri Lawrence Gomes, Coolie/
Mazdoor, Opa Water Works,
r/o Kalsad, Khandepar, Ponda-
Goa.

... Respondents.

Mr. D.P. Bhise, Advocate for the Petitioners.

Mrs. W. Coutinho, Government Advocate for the
Respondents 1 to 3.

Coram : P.V. HARDAS AND
D.G. KARNIK, JJ.

Date : 18th March 2004.

ORAL JUDGMENT (PER HARDAS, J.)

This petition, under Article 226 of the Constitution of India, impugns the Order, dated 31st July 2000, issued by the Chief Engineer, P.W.D., regularising the appointment of respondents 4 to 8 against the post of Assistant Mechanic with effect from 7th July 2000. The petitioners have, therefore, prayed for issuance of an appropriate writ for quashing/setting aside the aforesaid Order promoting the respondents 4 to 8 to the post of Assistant Mechanic and for issuance of a writ of mandamus directing the respondent State Government to consider the petitioners to the post of Assistant Mechanic existing at Opa Water Works.

2. Mr. Bhise, the learned counsel appearing for the petitioners, states that, admittedly, the petitioners were senior to the respondents 4 to 8. The respondents 4 to 8 do not possess the essential qualifications prescribed under the Recruitment Rules for the post of Assistant Mechanic. The relevant Recruitment Rules for promotion to the post of Assistant Mechanic contemplate that the incumbent should have a certificate of an Industrial Training Institute in the trade of Mechanic (motor vehicle/diesel) or equivalent. The desirable qualification is knowledge of Konkani and/or Marathi/Gujrathi. The channel of promotion to

the post of Assistant Mechanic is from helper (Mechanic)/Cleaner with five years service in the grade.

3. The learned Government Advocate appearing on behalf of the respondent State has admitted that the respondents 4 to 8 do not possess the essential qualifications as set out in the Recruitment Rules. The promotion of respondents 4 to 8, however, is justified on the ground that the respondents 4 to 8, though they were appointed as labourers/Coolie on Nominal Muster Roll, have performed the duties of Assistant Operator/Mechanic right from the date of their appointment. The promotion of respondents 4 to 8 is further justified on the ground that, since the respondents 4 to 8 as Labourers/Coolies were performing the duties of Assistant Mechanic right from the date of their appointment, they have performed the duties of the said post and, therefore, the educational qualifications had been relaxed.

4. The respondents 4 to 8 admittedly are junior to the petitioners. The respondents 4 to 8 do not possess the essential qualifications prescribed as per the Recruitment Rules. The Recruitment Rules also do not confer any power on the Executive Engineer to relax the educational qualifications so prescribed. The learned counsel on behalf of the Government has not been

able to point out any provision by which the essential qualification prescribed by the Recruitment Rules could be relaxed. If that be the case, the promotion of respondents 4 to 8 is contrary to the Recruitment Rules and the essential qualifications prescribed therein. The respondents 4 to 8 are absent, though served. They have chosen not to appoint an advocate to represent them in the matter.

5. We, therefore, see considerable force in the submission of the learned counsel for the petitioners that the promotion of respondents 4 to 8 is contrary to the Recruitment Rules. The promotion of the respondents 4 to 8 will, therefore, have to be quashed and set aside and, accordingly, the impugned Order, dated 31st July 2000, insofar as it relates to the promotion of the respondents 4 to 8 is quashed and set aside. The other relief, that is, the issuance of writ of mandamus that the respondent State Government should consider the petitioners to the post of Assistant Mechanic existing at Opa Water Works cannot be granted in view of the fact that the petitioners themselves do not possess the essential qualifications as prescribed by the Recruitment Rules. Mr. Bhise, the learned counsel for the petitioners, has admitted that the petitioners also do not possess the essential educational qualification. In view of this, relief as prayed in prayer Clause (b)

cannot be granted.

6. In the result, therefore, the Writ Petition is partly allowed. Rule is made absolute in terms of prayer Clause (a) to the petition. Rule stands discharged in respect of prayer Clause (b) to the petition with no order as to costs.

(P.V. HARDAS)
JUDGE.

(D.G. KARNIK)
JUDGE.

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